

**TOWN OF HAMPDEN, MAINE  
TREE ORDINANCE**

ENACTED DATE: November 5, 2007  
EFFECTIVE DATE: December 5, 2007

CERTIFIED BY: \_\_\_\_\_  
Name

\_\_\_\_\_  
Title Affix Seal

**TOWN OF HAMPDEN, MAINE  
TREE ORDINANCE  
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**The Town of Hampden hereby ordains that the following Tree Ordinance be enacted.**

**ARTICLE I.  
PURPOSE**

**1.1. Purpose.** It is the purpose of this ordinance to promote and protect the rural character and ecological health of the Town of Hampden's landscape and further protect the health, safety and general welfare of its residents, by providing guidance for, and where appropriate, the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the Town.

**ARTICLE II.  
AUTHORITY**

**2.1. Authority.** Pursuant to the provision Title 30-A M.R.S. Sections 3001 and 3280-3281 and the Charter of the Town of Hampden, Article II, Section 212, and Article III, Section 302, there is hereby established a tree ordinance to be organized, administered and governed in accordance with the following provisions.

**ARTICLE III.  
APPLICABILITY**

**3.1. Applicability.** This ordinance provides full power and authority over all trees, shrubs and other plants within street rights-of-way, parks and public places of the Town; and to trees, shrubs and other plants located on private property that constitute a hazard or threat as defined herein.

**ARTICLE IV.  
DEFINITIONS**

**4.1. Definitions.** Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Abutter- One whose property touches or adjoins along a border of another person's property as defined herein.

Drip Line- An imaginary, vertical line that extends from the outermost tips of the tree branches to the ground.

Person- Any individual, firm, partnership, association, corporation, company, organization, or entity of any kind.

Property Owner- The person owning such property as shown by the Town of Hampden's tax assessor records, unless proof to the contrary is available.

Public Property- Includes all property owned, leased, or occupied by the Town of Hampden or any of its administrative agencies or departments, or any property on which the Town is the holder of a conservation easement.

Public tree, shrub, or other plant- All trees, shrubs, or other plants now or hereinafter growing in any street or road right-of-way, park, town forest, or other public property.

**Right of way** - The strip of public or private land subject to a right to traverse and on which facilities such as streets, utilities and drainage conveyances are built.

**Street or Road**- The entire width of every public way or right-of-way when part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular or pedestrian traffic.

**Street Tree**- Any tree located or planted within the right-of-way of a street or road.

**Threat or hazard**- A threat or hazard is that which constitutes an infringement on public health or safety by a tree, shrub, or other plant that is located on public property or rights-of-way or located on private property that is adjacent to a public area or right-of-way.

**Topping**- The severe cutting back of limbs to stubs larger than three inches in diameter within a tree's crown to such a degree as to remove the normal canopy and disfigure the tree.

**Town Forester**- The designated official of the Town assigned to carry out the enforcement of this ordinance.

**Treelawn**- That part of a street or highway right-of-way, not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

**Large Trees**- are those tree species that habitually attain a height of forty-five feet or more.

**Medium Trees**- are those tree species that habitually attain a height of thirty to forty-five feet.

**Small Trees**- those tree species that habitually attain a height of less than thirty feet.

## **ARTICLE V. HAMPDEN TREE BOARD AUTHORITY AND POWER**

**5.1. Authority and Power.** The Hampden Tree Board is hereby created and established. The Board shall consist of a minimum of five members, appointed by the Town Council. It is preferred that members be residents of the town, that one member be a licensed professional forester or have education/experience in forest resources, that one member be a licensed arborist or have education/experience in arboriculture, and that one be a member of the Town of Hampden Conservation Commission. The Town Forester shall serve as an ex-officio member of the board.

## **ARTICLE VI. TERM OF OFFICE**

**6.1. Term of Office.** The term of the members shall be for three years, except that the term of the members approved to the first Board shall be as follows: three members shall be appointed for two years, and two members shall be appointed for three years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for the unexpired portion of the term. Members may renew their membership upon re-appointment by the Town Council.

## **ARTICLE VII. DUTIES AND RESPONSIBILITIES**

**7.1. Public Area Tree Plan.** It shall be the responsibility of the Board to study, develop, update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets within the public right of way, and in other public areas.

**7.2. General Forest Plan.** The Board shall similarly study, develop, and update annually a general forest plan with non-regulatory guidelines and recommendations for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs on private lands with the intent of preserving the rural character and ecological health of the Town. These documents will be presented annually to the Town Council and upon their acceptance and approval shall constitute the official comprehensive tree plan for the Town of Hampden, Maine.

**7.3. Research and Education.** When requested by the Town Council, the Board shall investigate and report upon any matter coming within the scope of its work. The Board also may initiate such actions itself, as it deems appropriate. The Board shall promote and assist in the dissemination of information, for the purpose of public education related to the Town's comprehensive tree plan and the standards and guidelines therein. The Board shall be involved in the selection of the Town Forester.

## **ARTICLE VIII. OPERATION**

**8.1. Operation.** The Board shall choose its own officers, develop its own bylaws, and maintain a public record of its proceedings. A majority of the members shall be a quorum for the transaction of business. Members shall serve without compensation.

## **ARTICLE IX. LANDSCAPING**

**9.1. Landscaping.** The Board will assist with the development of new ordinance sections relating to landscaping and in new subdivisions or other new developments, which shall be included in the Town Subdivision Ordinance and Zoning Ordinance. As part of the review process for site plan and subdivision proposals, the Tree Board shall review landscaping plans for pending applications and may make written comments and/or suggestions to the planning board concerning the adequacy of the plans under this ordinance and the comprehensive tree plan and program.

## **ARTICLE X. TOWN FORESTER**

**10.1. Town Forester Established.** The position of Town Forester is hereby created. The Town Forester shall be appointed by the Town Manager and be a person skilled and trained in municipal arboriculture, and shall hold a college degree or its equivalent in arboriculture/ornamental or landscape horticulture, urban forestry, or other closely related field. The Town Forester shall hold a current license from the State of Maine in either arboriculture or forestry. The Town Manager initially may delegate the duties and responsibilities to qualified existing staff and/or contract with qualified professionals to provide services in a timely and professional manner.

**10.2. Oversight Responsibilities.** The Town Forester shall, in concert with the Tree Board, oversee all forest management and urban tree care for the Town. It shall be the duty of the Town Forester to ensure compliance of all contractual agreements entered into by the town for work done in accordance with the terms of this ordinance. The Town Forester shall ensure that a current management plan is on file for all town forest parcels, and that an inventory and care plan of all street trees is created and maintained. At the discretion of the Town Forester and the Tree Board, additional inventory and management plans of trees, shrubs, or other plants may be conducted. The Town Forester shall provide administrative support to the Tree Board as requested.

**10.3. Enforcement Responsibilities.** The Town Forester shall also enforce the rules and regulations of this ordinance and the annual plans as developed by members of the Tree Board and approved by the Town Council.

**10.4. Ex-officio Member of Tree Board.** The Town Forester will serve on the Tree Board as an ex-officio member.

## **ARTICLE XI. UTILITIES**

**11.1. Utilities.** Street Trees shall be planted in a manner so as to not create conflict with overhead utility wires, or any underground water line, sewer line, transmission line or other utility. These guidelines may be modified dependent upon specific circumstances, subject to approval of the Town Forester.

## **ARTICLE XII. PUBLIC TREE, SHRUB, AND OTHER PLANT CARE**

**12.1. Planting, Maintenance and Removal of Public Trees.** The Town shall have the right to plant, prune, maintain and remove trees, shrubs and other plants within the right-of-way of all roads, streets, alleys, avenues, lanes and squares, as well as all parks, town forests, and other public property grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

**12.2. Removal of Public Trees in Unsafe Condition.** The Tree Board or Town Forester may remove, cause or order to be removed, any public tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewer, electric power lines, gas lines, water lines, or other public improvements, or is affected by an injurious disease, insect or other pest. This section does not prohibit the planting of Street Trees by adjacent property owners providing that the selection and location of said trees is in accordance with the approved comprehensive town tree plan.

**12.3. Protection of Public Trees During Construction Activities.** Persons working construction in the Town of Hampden shall provide protection for public trees by erecting a temporary snow fence on the drip line of any such trees on the site of or that could be negatively affected by any excavation, construction or street work and care shall be taken that injury does not occur either above ground to trunk or limbs or compaction or smothering of roots occur below ground. No person shall deposit or store any machinery, stone, brick, soil, metal, concrete or similar materials which may compact soil or impede the free passage of water and air to the roots within the area of the drip line. The Town Forester may waive these requirements in extenuating circumstances.

**12.4. Protection of Public Trees From Excavation Activities.** No person shall excavate any ditches, tunnels, trenches, or lay any drive within the dripline of any public tree without first obtaining written permission from the Town Forester. This rule may be superseded if the project is approved and permitted by the State Department of Transportation.

**12.5. Protection of Public Trees From Alteration, Removal and Injury.** Under no circumstance shall any person cut, carve, transplant, top, tip or remove any public tree, shrub or other plant; attach any rope, wire, nails, advertising posters, or other contrivance to any such tree; allow any gas, liquid or solid substance which is harmful to trees, shrubs or other plants to come in contact with them; or to set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree, shrub or other plant.

### **ARTICLE XIII. REMOVAL OF STUMPS**

**13.1. Removal of Public Stumps.** All stumps of street and park trees and shrubs shall be removed below the surface of the ground so that the top of the stump shall not project above ground level.

Notwithstanding this requirement stump removal in rural forested areas of the Town is at the discretion of the Town Forester and Tree Board.

### **ARTICLE XIV. DISTANCES FROM CURB, SIDEWALK, AND DRIVEWAYS ON PUBLIC PROPERTY**

**14.1. Separation Between Trees and Public Ways.** The distance trees may be planted from curbs or curblines, driveways and sidewalks shall be enough so as not to create damage to infrastructure or impede the health of the tree as determined by the Town Forester.

### **ARTICLE XV. DISTANCES FROM STREET CORNERS AND HYDRANTS**

**15.1. Separation Between Trees and Corners** No tree, shrub or other plant shall be within 30 feet of any road intersection or street corner, measured from the point of nearest intersecting curbs or curblines, if it constitutes a safety hazard. The purpose of this restriction is to ensure public safety by prohibiting the planting of vegetation that may impede or obstruct sightlines.

**15.2. Separation Between Trees and Fire Hydrants.** No tree, shrub or other plant shall be planted closer than ten feet of any fire hydrant.

### **ARTICLE XVI. PRIVATE PROPERTY OWNER RESPONSIBILITIES**

**16.1. Maintenance Required.** Every property owner shall maintain trees, shrubs or other plants on the owner's property so as to prevent a threat or hazard as defined herein.

**16.2. Threat or Hazard.** A tree, shrub or other plant located on privately owned property shall be deemed a threat or hazard if it, or any part of it, by reason of its condition and in the professional judgment of the Town Forester: is likely to fall onto adjacent public ways or public property; or is not pruned to a height of 14 feet above the traveled portions of the public ways and eight feet above public sidewalks.

### **ARTICLE XVII. PRUNING FOR VISIBILITY/ REMOVING OBSTRUCTIONS**

**17.1. Pruning.** The Town shall have the right to prune or remove any tree, shrub or other plant if and when, in the opinion of the Town Forester, Public Works Department, or Public Safety Director, it interferes with visibility of any traffic control device or intersection, or interferes with pedestrian or vehicular traffic, or impedes or obstructs sightlines. A clearance of fourteen feet above street surface or eight feet above the sidewalk surface shall be maintained.

**17.2. Modification of Guideline.** This guideline may be modified dependent upon specific circumstances, subject to approval of the Town Forester.

## ARTICLE XVIII. INTERFERENCE WITH TREE BOARD AND TOWN FORESTER

**18.1. Interference Prohibited.** No person shall hinder, prevent, delay, or interfere with the Tree Board or Town Forester or any other town agent, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any street tree, shrub or other plant, park tree, town forest tree, tree on other public property, or tree on private property, as authorized in this ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the town.

**18.2.** The Town Forester can, if informed of a threat or hazard, approach a private landowner and request correction of the situation. If informal contact does not resolve the threat or hazard, The Town Forester may provide written notification thereof to the property owner, along with an order to abate the threat or hazard. The notification shall also advise the property owner of the owner's rights of appeal under this ordinance. If the threat or hazard is not adequately abated by the landowner, the owner may be subject to further action by the Town as provided elsewhere in this ordinance.

## ARTICLE XIX. PENALTIES, CLAIMS, AND APPEALS

**19.1. Civil Penalty.** Any person who violates any provision of this ordinance or who fails to comply with any notice issued pursuant to any provision of this ordinance, upon being found guilty of violation, shall be subject to a civil penalty not to exceed \$500 for each separate offense. Each day during which any violation of the provisions of this ordinance shall occur or continue shall be a separate offense.

**19.2. Repair and Replacement Costs.** If, as the result of the violation of any provision of this ordinance, the injury, mutilation, or death of a tree, shrub, or other plant located on public property is caused, the cost of repair or replacement, or the appraised dollar value of such tree, shrub, or other plant, shall be borne by the party in violation. The value of trees and shrubs shall be determined in accordance with the latest revision of *A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens*, as published by the International Society of Arboriculture.

**19.3. Abatement Costs.** In the event that a threat or hazard is not abated by the date specified in the notice, the Town Forester is authorized to cause the abatement of said threat or hazard. The reasonable cost of such abatement shall be reimbursed to the Town by the property owner. Failure to reimburse the Town within thirty (30) days of the issuance of an invoice by Town shall be a violation of this ordinance. In addition, the owner of the property on which the threat or hazard was located shall be subject to prosecution.

**19.4. Compliance With Board of Appeals Ordinance.** All appeals shall be subject to the provisions of the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions of the Board of Appeals and subsequent appeals to Superior Court. The property owner or any other aggrieved person may appeal to the Town of Hampden Board of Appeals, from a decision of the Town Forester and/or Tree Board refusing to grant a modification to the provisions of this ordinance covering maintenance and removal of trees, shrubs and plants. Such appeal shall be commenced within 30 days of the decision.

**19.5. Appellate Review.** The Board of Appeals may conduct an appellate review of the refusal to grant a modification to the provisions of this ordinance covering maintenance and removal of trees, shrubs and plants.

**19.6. Basis of the Appeal.** The appellant must demonstrate that the decision of the Town Forester/Tree Board having jurisdiction: (1) failed to correctly interpret the provisions of this ordinance or the rules, and regulations established pursuant to this ordinance, (2) the provisions of this ordinance do not fully apply, or (3) failed to consider that an equivalent form of maintenance and removal of trees, shrubs and plants can be used.

**19.7. Modification or Reversal of the Decision.** The Board of Appeals may modify or reverse the decision of the Town Forester/Tree Board upon making a determination that (1) the provisions of this ordinance or the rules and regulations established pursuant to this ordinance have been incorrectly interpreted, (2) the provisions of this ordinance do not fully apply, or (3) an equivalent form of tree, shrub or plant care can be used.

## **ARTICLE XX. ENFORCEMENT**

**20.1. Enforcement.** This ordinance shall be effectively enforced and administered by the Town Forester, with the assistance of all town departments, as necessary to accomplish the spirit and letter of this ordinance and annual tree plan. When any violation of any provision of this ordinance is found to exist, the Town Forester is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, that the Town Forester may deem appropriate or necessary to enforce the provisions of this ordinance.

## **ARTICLE XXI. REVIEW BY TOWN COUNCIL**

**21.1. Town Council Review Authority.** The Town Council shall have the right to review the conduct, acts and decisions of the Tree Board and Town Forester.

## **ARTICLE XXII. SEVERABILITY**

**22.1. Severability.** Should any section, clause, or provision of this ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.